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Docket No.: 214502US0PCT

COMMISSIONER FOR PATENTS
ALEXANDRIA, VA 22313-1450

RE: Application Serial No.: 09/926,609
Applicants: Rino MESSERE et al.
Filing Date: APRIL 3, 2002
For: TRANSPARENT GLAZING AND USE THEREOF IN A CHILLING CHAMBER DOOR COMPRISING IN PARTICULAR A GLAZING UNDER VACUUM
Group Art Unit: 1773
Examiner: UHLIR, N.

SIR:

Attached hereto for filing are the following papers:

Petition Under 37 CFR §1.181

Our check in the amount of $0.00 is attached covering any required fees. In the event any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 C.F.R 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit the difference to our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 C.F.R. 1.136 for the necessary extension of time. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :

RINO MESSERE ET AL : EXAMINER: UHLIR, N.

SERIAL NO: 09/926,609 :

FILED: APRIL 3, 2002 : GROUP ART UNIT: 1773

FOR: TRANSPARENT GLAZING AND USE THEREOF IN A CHILLING CHAMBER DOOR COMPRISING IN PARTICULAR A GLAZING UNDER VACUUM

PETITION UNDER 37 C.F.R. § 1.181

ASSISTANT COMMISSIONER FOR PATENTS
ALEXANDRIA, VA 22313-1450

SIR:

Applicants, through counsel, hereby petition under 37 C.F.R. §1.181 to invoke the supervisory authority of the Commissioner.

The above-identified national stage application was filed from an international application on May 25, 2000. In accordance to a Notice of Acceptance of Application under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495 (Notice of Acceptance), Applicants were granted a date of April 3, 2002, as the date of meeting the requirements of 35 U.S.C. § 371(c).

The above-identified national stage application was filed with an English translation, based on a French original application. The translation contained an error. The correct word --adsorbent-- was incorrectly translated as "absorbent", which error was corrected in an amendment filed August 30, 2002.

In a decision, styled Notification, dated April 14, 2003, the Office of PCT Legal Affairs vacated the above-discussed Notice of Acceptance and forwarded this application to the National Stage Processing Branch of the Office of PCT Operations for processing in accordance with the decision, i.e., for mailing a corrected Notice of Acceptance according the application a 35 U.S.C. § 371(c) date of August 30, 2002, i.e., the date of the above-discussed correcting amendment.

Applicants respectfully submit that the action of the Office is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 35 U.S.C. § 371(c)(2) requires, *inter alia*, **a translation** into the English language of the international application, if it was filed in another language (emphasis added). 37 C.F.R. § 1.495 provides no further interpretation of the term "translation," except that 37 C.F.R. § 1.495(f) provides for verification of the translation "where it is considered necessary[.]"

There is nothing in the statute or rules which requires that the translation be totally correct or totally error-free, let alone correct or error-free.

By way of analogy, 35 U.S.C. § 375(b) provides that where due to an **incorrect translation** the scope of a patent granted on an international application designating the United States, which was not originally filed in the English language, exceeds the scope of the international application in its original language, a court of competent jurisdiction may retroactively limit the scope of the patent, by declaring it unenforceable to the extent that it exceeds the scope of the international application in its original language. (Emphasis added.)

Applicants submit that the presence of § 375(b) is evidence that Congress contemplated errors in translations and, if Congress intended "translation" to mean "correct translation," it would have included the word "correct." Indeed, the presence of § 375(b) evidences an awareness that errors in translations of foreign documents into English are not

uncommon. To the extent there is any ambiguity in the scope and meaning of the term "translation" in 35 U.S.C. § 371(c) as to whether it is limited to correct translations, such ambiguity should be construed against the drafter, i.e., Congress, not Applicants.

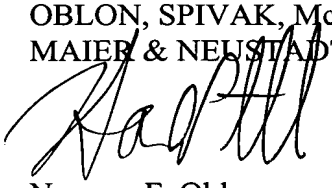
Moreover, the Office's interpretation encourages Applicants to conceal later-discovered errors in a translation of an international application, especially when such errors would not implicate 35 U.S.C. § 375(b), i.e., would not result in the scope of the patent exceeding the scope of the international application. Even in cases where 35 U.S.C. § 375(b) would be implicated, concealment of such errors would simply limit claim scope to what it should have been but for the errors.

For all the above reasons, it is respectfully requested that the above-discussed Notice of Acceptance be reinstated, and that Applicants be found to be entitled to a 35 U.S.C. § 371(c) of April 3, 2002.

On May 2, 2003, undersigned counsel discussed the issues raised in this petition with Daniel Stemmer, who signed the Notification, prior to filing this petition, asking for the legal basis for the Notification. Counsel was simply referred to 35 U.S.C. § 371(c) and 37 C.F.R. § 1.495.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



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